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In the Supreme Court of the United States

OCTOBER TERM, 1954

No. 639

MATSON NAVIGATION COMPANY, a corporation,
Petitioner,

vs.

HENRY C. LAWLER,
Respondent.

Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

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In the Supreme Court of the United States

OCTOBER TERM, 1954

No. .....

MATSON NAVIGATION COMPANY, a corporation,
Petitioner,

vs.

HENRY C. LAWLER,
Respondent.

Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

Matson Navigation Company prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Ninth Circuit in *Matson Navigation Company,* a corporation, Appellant, vs. *Henry C. Lawler,* Appellee, No. 13743.

OPINIONS BELOW

The opinion of the Court of Appeals (R. 52) is reported in 217 F.2d 645. The opinion of the District Court (R. 11) is reported in 108 F. Supp. 946. Both opinions are printed in an appendix.

JURISDICTION

The judgment was made and entered December 8, 1954. The jurisdiction of this Court is invoked under 28 U.S.C., Sec. 1254(1).

QUESTION PRESENTED

Is a seaman entitled to maintenance if injured in the course of personal relaxation at his own home,—i.e., where the injury occurs onshore, off duty, at his own home—merely because an employer - employee relation with the shipowner exists at the time?

STATEMENT OF THE CASE

This was a seaman's suit in admiralty, under the maritime law, for maintenance* (R. 3). The District Court had jurisdiction under 28 U.S.C., Sec. 1333(1).

The seaman, Lawler, was injured in an automobile accident while driving his own automobile from his own home in San Francisco to a nearby city on a personal pleasure trip (R. 12, 16).

Lawler was a waiter on petitioner's ship, the SS LURLINE, the home port of which was also San Francisco. The ship arrived in San Francisco, and he was paid off and released from all obligations under the articles for the voyage just concluded, about 9:30 A.M. on May 11, 1952 (R. 15). He left the vessel, went to his home, then went on the automobile trip, and suffered his accident about 12:30 P.M.

Before arrival in San Francisco he had signed articles for the succeeding voyage. Pay began under the new articles at 12 Noon on May 11th. But, under established practice, he was not required to report for duty until the

*He had received his "cure" without cost at a U. S. Public Health Service Hospital.

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next day. As found, "libellant was not required to report for work under such articles until 9:30 A.M. on May 12, 1952" (R. 15). When he left the ship at 10 A.M., he did not advise anyone where he would be or could be reached (R. 42). It was, in his words, his "time off to do what or go where" he pleased (R. 43). The ship could not have called him for duty before 9:30 A.M. the next day because he could not have been found.

The Judgment and its Basis

The District Court awarded Lawler 68 days maintenance, totalling $544.00 (R. 16) on the basis that he was "a member of the crew" and "generally answerable to the call of duty at the time he was injured" (App. p. 4). The Court of Appeals affirmed in a brief opinion stating no more than that it believed the judgment to be in accord with "the current trend of authority" and that "we are in agreement with the trend" (App. p. 4). The reference to a trend is, of course, tantamount to a statement that no decision had yet gone so far.

REASONS FOR GRANTING THE WRIT

The question is an important one of federal maritime law which has not been, but should be, settled by this Court. The decision below applies a rule that this Court was expressly asked to establish in *Aguilar v. Standard Oil Co.*, 318 U.S. 724, but deliberately refrained from approving. Moreover, the judgment is in conflict with the carefully stated rationale of this Court's decision in the *Aguilar* and later cases.

The Decision is an Unwarranted Expansion of the Right to Maintenance, Contrary to the Rationale of This Court's Decisions in the Aguilar, Warren and Farrell Cases.

The doctrine of maintenance and cure is an ancient part of maritime law. That law denied seamen any right to damages for negligence but it declared that a seaman injured "in the service of the ship" is entitled to medical treatment and support while recovering, without regard to fault of the ship. *The Osceola,* 189 U.S. 158. The right to maintenance for injuries sustained on shipboard, whatever the activity at the time, has long been recognized. So also was the right where injuries were sustained in performance of some activity on behalf of the ship, whether occurring on ship or ashore. But, prior to the *Aguilar* case, it was generally supposed that the right did not exist if the seaman was injured "off-duty, ashore." Cf. 1 *Benedict on Admiralty* (6th ed.) Sec. 83, p. 254, and citations.

In the *Aguilar* case this Court held a seaman entitled to maintenance for "injuries incurred on the dock or other premises which must be traversed in going from the vessel to the public streets or returning to it from them" while on shore leave in a foreign port.

The respective positions of the seaman and the shipowner in that case were sharply stated. The shipowner contended that if a seaman is injured ashore, he may have maintenance only if "on duty" at the time. The claimant went to the other extreme. He contended that the key term, "in the service of the ship," "includes the whole period of service covered by the seaman's articles; and, if he is injured *during this time,* the right is made out" (pp. 726, 272).

This Court rejected the shipowner's contention, *but it did not adopt the claimant's.* It analyzed the considerations warranting maintenance, held that they "applied to the

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facts presented by these cases"* (p. 733) and added, "How far it [liability] extends beyond that we need not now determine." (p. 737)

Later, in *Warren v. United States,* 340 U.S. 523 (3 justices dissenting), the right to maintenance was extended to a seaman injured in a dance hall while on shore leave in a foreign port, on the ground that "This reasoning [of the *Aguilar* decision] is as applicable to injuries received during the period of relaxation while on shore as it is to those received while reaching it." (340 U.S. at 530)

The reasoning of the *Aguilar* case is, then, its heart. It was this:

1. There should not be "cast upon the seaman hazards encountered only by reason of the voyage" (318 U.S. at 733).

2. "Because of the voyage, the shipowner's business," the seaman's need for relaxation must be "satisfied in distant and unfamiliar ports." When a seaman is injured in "those surroundings," i.e., a port away from home, "it is the ship's business which subjects the seaman to the risks attending hours of relaxation in strange surroundings," for it was the ship that "separated him from his usual places of association" (p. 734).

3. "It was from considerations of exactly this character that the liability for maintenance and cure arose" (p. 734).

The *Aguilar* and *Warren* cases have been followed by a considerable number of decisions in lower courts awarding maintenance for injuries sustained ashore in foreign ports.† However, 3 reported cases, other than the instant cause,

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**Waterman SS Co. v. Jones* involved the same facts and was decided with *Aguilar.*

†See, for example: *Korstenen v. American Export Lines,* 1948 A.M.C. (N.Y. City Court); *Grovel v. Stockard SS Co.,* 176 F.2d 121 (3 Cir.); *Ellis v. American-Hawaiian SS Co.,* 165 F.2d 999 (9 Cir.). By "foreign port" is meant, of course, any port away from home.

have arisen involving injuries ashore in the seaman's home port, in which the courts have used the *Aguilar* and *Warren* decisions as a point of departure for an inexcusable extension of the right to maintenance. In *Hunt v. Trawler Brighton, Inc.*, 102 F. Supp. 300 (D.C. Mass.), the seaman, while ashore in the home port between voyages on a fishing vessel, spent the night at his lodging house and was injured on his way to a restaurant. In *Smith v. United States*, 167 F.2d 550 (4 Cir.), the injury occurred in the home port on shore leave but after the seaman had reported for duty for a foreign voyage. And in *Keefe v. American Pacific Steamship Co.*, 110 F. Supp. 853 (S.D. Cal.), the court awarded maintenance for an injury ashore, off duty, at the home port, but did so with repeated emphasis on the fact that the seaman had already entered on his duties under the articles before going ashore.

These are the cases that constitute the "trend" referred to and approved by the Court of Appeals below,* and its decision carries the "trend" further. It rests on the assumption that a seaman is entitled to maintenance for any injury, anywhere, if only the employment relation exists at the time. The shipowner is thus compelled to give an accident and health insurance policy to its seamen employees. This is precisely the contention of the claimant in the *Aguilar* case which this Court refrained from approving.

The question thus presented is whether the right to maintenance is to be extended to a seaman injured while satisfying the need for relaxation at his own home, i.e., at a time and in circumstances to which no consideration of the character stated in *Aguilar* can possibly apply. In *Farrell*

**Siclana v. U. S.*, 56 F. Supp. 442 (D.C. N.Y.) holds the other way, as, apparently, does a poorly reported decision of an inferior court in New York, *Taylor v. United Fruit Co.*, 71 N.Y. Supp. 22.

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v. United States, 336 U.S. 511, where the seaman was injured in a foreign port while returning to the vessel, the teaching of the *Aguilar* case as to foundation of the doctrine of maintenance was succinctly stated (pp. 515, 516):

> "In *Aguilar v. Standard Oil Co.,* 318 U.S. 724, the Court pointed out that logically and historically the duty of maintenance and cure derives from a seaman's dependence on his ship * * *"

A seaman ashore, off duty, seeking relaxation *at his own home,* is not dependent on his ship. He is no more dependent on his ship than is a factory worker at home dependent on his place of employment. He is not there subject to hazards encountered by reason of a voyage or under the need to seek relaxation in unfamiliar ports, or under risks attending such relaxation in strange surroundings. To say that such a person at such a time is "in the service of the ship" distorts words, subverts history, and defies the rationale of this Court's decisions. Lawler's hazard of injury in an automobile accident was the same as if he had been a waiter in a San Francisco restaurant rather than a waiter on the LURLINE.

The Question Is Important

The question is certainly important. Litigation concerning maintenance and cure constantly flows into the courts. The present decision, if allowed to stand, will inspire a further torrent. Although the doctrine of maintenance and cure is ancient, here is a new extension—wholly apart from legislation. Hence the legal importance.

The practical importance is similarly great. If the decision represents the law, then maintenance may be collected from the shipowner every time a seaman slips in his own bathtub, drops a chair on his foot while moving his furni-

ture, dislocates a finger while playing ball with his children, injures himself while jacking up his automobile in his own backyard to change a tire. No more is necessary than that he be an employee of a ship at the time. Not even signature to articles is necessary, for articles are merely a mode of evidencing the employer-employee relationship,* and there are many cases where maintenance has been awarded employees injured on tugs, barges and ferry boats. These harbor vessels number in the hundreds if not thousands. Under the decision below any employee on these vessels injured at home, to which he returns each night, may have his maintenance.

So again, in the case of seagoing ships, if a voyage is completed but the seaman has agreed to go on another and is then injured at home, the shipowner must pay maintenance. On vessels which tramp the seas for months before returning home, as in olden times, the new liability would not be proportionately large. But for present-day passenger vessels, which carry crews of 300 to 600 men and spend time in the home port every two or three weeks, the new rule imposes a significant burden. It is fair to say that the new liability is fantastic in its magnitude.

The Expansion of the Doctrine of Maintenance Is Unwarranted

In its denial of damages despite negligence and its award of maintenance, cure and wages even in the absence of the shipowner's fault, the maritime law applied a form of workmen's compensation. By statute Congress has given seamen the additional right of damages for negligence (Jones Act, 41 Stat. 1007, 46 U.S.C., Sec. 688). Thus the seaman has been singled out to receive the advantages of two dif-

*Thus in *Hunt v. Trawler Brighton, Inc.*, 102 F. Supp. 300 (D.C. Mass.), the court noted that articles are not pertinent. To the same effect, *Sullivan v. United States*, 73 F. Supp. 525 (S.D. N.Y.).

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ferent systems and the disadvantages of neither. The present decision gives him an additional right as well, the right to an accident and illness insurance policy covering injuries not related to his employment.

And here lies a paradox: The doctrine of maintenance and care was the product of certain social and economic conditions; those conditions have become more and more obliterated by modern ships, modern working conditions, high wages and a variety of other benefits that are the envy of other workers. Yet, while the conditions that gave birth to the doctrine are largely if not entirely vanished, the doctrine is being enlarged by judicial decisions, which rest on a conception of the seaman's economic condition taken from another age and perpetuated by romantic notions.*

Improvement in the economic circumstances of seamen in the last twenty years and particularly during and since World War II has been phenomenal. On the basis of earnings and so-called fringe benefits, there is no large group of workers in the world who can compare with them. For example, from 1943 to 1953, average monthly earnings of licensed seamen under Pacific Coast maritime contracts rose from $295.72 to $863.62, while earnings of unlicensed seamen rose from $163.20 to $523.64, or some 320%. In the same period earnings of manufacturing workers in the United States went from $194.78 to $309.74. Iron and steel workers and automobile workers, considered the pattern-setters in collective bargaining, made gains, respectively, from $215.19 to $329.72 and $250.29 to $380.38, i.e., 170% or less. Additionally, seamen working under Pacific Coast contracts receive welfare benefits, vacations and pension plans equalling or exceeding any in the country for large

*Cf. "Wards of the Admiralty—an Anachronism?", 16 *George Washington Law Review*, p. 523 et seq.

groups of workers. And all this is in addition to board and room while on board ship.

So also the days of virtual servitude of seamen are long gone. Shipping has become thoroughly unionized during the past two decades. Rather than being dependent upon shipowners, seamen now have collective economic power of immeasurable strength, and have imposed costs on the operation of ships so staggering as to contribute to the decline of the number of ships in the Pacific Coast domestic trade from 919 in 1946 to 150 now.

In *Boudoin v. Lykes Bros. Steamship Co., Inc.*, No. 406, this term, in which certiorari was granted on October 15, 1954 and argument heard on February 11, 1955, a brief of The American Merchant Marine Institute, as amicus curiae, was filed about January 24, 1955, in which the changed social and economic circumstances of American seamen have been depicted at considerable length. That picture is fully applicable here.

In *Calmar S.S. Corp. v. Taylor*, 303 U.S. 525, 528, the Court said:

> "The reasons underlying the rule [of maintenance and cure] to which reference must be made in defining it, are those enumerated in the classic passage by Mr. Justice Story in *Harden v. Gordon*, Fed. Cas. No. 6047 (C.C.): the protection of seamen, who, as a class, are poor, friendless and improvident, from the hazards of illness and abandonment while ill in foreign ports; the inducement to masters and owners to protect the safety and health of seamen while in service; the maintenance of a merchant marine for the commercial service and maritime defense of the nation by inducing men to accept employment in an arduous and perilous service."

The extent of the rule is here said to be defined by the reasons underlying it, and three reasons are given. The first

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is that seamen are "poor, friendless and improvident" and therefore must be protected from illness in foreign ports. This reason never did call for maintenance for an injury incurred at home, and to say that seamen today are a poor, improvident, homeless and friendless group is to substitute the past for the present. The second reason is the inducement to shipowners to protect the safety of seamen while in service. But the shipowner has nothing to say about a seamen's use of his spare time at home; to intrude would be sheer presumption quickly rebuffed by the seaman and his union. The third is the maintenance of a merchant marine, an end hardly served by placing new burdens on the staggering back of a dwindling industry.

Cessante ratione, cessat et ipsa lex is an elementary maxim. While petitioner does not ask the Court to undo an old doctrine because of changed conditions, it does submit that an old doctrine should not be expanded when the conditions that created it have largely if not entirely disappeared.*

At the very time that the description in *Harden v. Gordon* still fitted the facts, the courts never gave maintenance for injuries *ashore, off duty, at home.* Mr. Justice Story's decision in *Reed v. Canfield,* Fed. Cas. No. 11641, has been cited to support maintenance for injuries received in the home port. But he there explicitly approved the following statement of the law:

> "'By the ancient marine ordinance, if a mariner falls sick during a voyage, or is hurt in the performance of his duty, he is to be cured at the expense of the ship;

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*This Court has recognized, as in *Farrell v. United States,* 336 U.S. 511, 514, that some conditions have vastly changed:

> "We need not elaborate upon the meanings or weight to be given to the [se] medieval pronouncements of maritime law. As they show, they were written when pirates were not operatic characters but were real-life perils of the sea."

but not, if he receives an injury in the pursuit of his own private concerns.'" (Emphasis supplied.) (p. 428, first col.).

And he went no further than to award maintenance for an accident incurred while the seaman was actually in the performance of service, a fact his opinion emphasizes.* *Reed v. Canfield* holds that injuries incurred in the performance of duties, wherever occurring, call for maintenance, but that injuries incurred in the pursuit of the seamen's private concerns do not. A principle that a seaman is entitled to maintenance for an injury incurred ashore, off duty, at home can only be engendered by wedding a principle Mr. Justice Story rejected to one he accepted. The progeny is illegitimate, and Mr. Justice Story cannot be cited as its grandfather.

CONCLUSION

We respectfully submit that the petition should be granted and the judgment reversed.

Dated: San Francisco, California,
March 3, 1955.

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" * * the accident occurred, while the libellant and the others of the boat crew were actually in the ship's service" (20 Fed. Cas. at p. 430, 2nd col.).

(Appendix follows)

APPENDIX

In the United States District Court
Northern Division California, Southern District
December 18, 1952

No. 26127

Henry C. Lawler,
Libelant,

vs.

Matson Navigation Company,
a corporation
Respondent.

OPINION

ROCHE, Chief Judge.

This is an action for maintenance and cure. There is no question that libelant suffered injuries that incapacitated him for a period of time. The only issue before the court is whether, at the time he was so injured, libelant was in the service of the ship. The facts disclosed by the record, which included no testimony except libelant's deposition are as follows.

Libelant was employed as a waiter on respondent's vessel, the S. S. Lurline, under articles that terminated at San Francisco, California, on May 11, 1952. On May 9th, while still at sea, libelant signed new articles for a round-trip voyage from San Francisco to Honolulu. This voyage was subsequently cancelled because of a strike but libelant's rights, if any, were not thereby affected. It was libelant's testimony that it was customary on the coastwise vessels to sign articles at sea for the ensuing voyage; that in the

instant case the articles in effect on May 9th terminated at noon on May 11th and the new articles became effective immediately; that some members of the stewards department had to work on the 11th but, by custom, the members whose home port was San Francisco did not; that they were free to go ashore; and that they all had to be on board for fire and boat drill on the morning of the 12th. The Lurline docked around nine o'clock on the morning of May 11th and by ten o'clock the libelant was ashore. He was injured in an automobile accident while driving from his home to Calistoga between eleven o'clock and noon.

[1, 2] The duty of the shipowner to furnish maintenance and cure exists in the seaman's home port as well as in a foreign port if he is in the service of the ship at the time he falls ill or is injured and his injury is not due to his wilful act, default or misbehaviour. This was clearly stated by Mr. Justice Story a hundred and twenty years ago in Reed v. Canfield, C.C., Fed. Case No. 11, 641. Subsequent decisions have given the term "in the service of the ship" an even broader construction. In 1948 the Court of Appeals for the Fourth Circuit allowed maintenance and cure to a seaman injured while leaving the home of a friend in his home port. Smith v. United States, 4 Cir., 167 F.2d 550. The seaman had requested shore leave for the purpose of going to his home to obtain some belongings to take with him on the voyage. After leaving his home he went to that of a friend where he spent the night. He suffered his injury the next morning. The district court had denied relief on the ground that the libelant's visit to his friend bore no relation to his declared purpose in obtaining shore leave. In reversing the district court the court of appeals declared that this was not a valid ground for denying relief since there was no effort to limit his movement ashore when the leave was granted.

In 1951 the Supreme Court held a seaman entitled to maintenance and cure for injuries resulting from a fall from a dance hall balcony while he was on shore leave in Naples. Warren v. United States, 340 U.S. 523, 71 S.Ct. 432, 95 L.Ed. 503.

The most recent case on this point appears to be Hunt v. Trawler Brighton Inc., 102 F. Supp. 300, 301, a decision of the United States District Court, District of Massachusetts. Libelant in this case worked on a fishing trawler which customarily tied up at the home port dock for forty-eight hours between trips. The men serving on her were not under articles, their continued service being assumed unless they were discharged or voluntarily quit. Libelant was injured while leaving his house to go to a restaurant. The court, in granting maintenance and cure, declared, "There is no doubt that libelant was, at the time of his injury, a seaman and a member of the crew of the trawler Brighton. * * * The right to maintenance and cure is not determined by what the seaman is doing when he receives his injury. It is only required that he be in the service of the ship in the sense of being generally answerable to the call of duty."

In the case now before the court there is no question that libelant was a member of the crew of the Lurline and generally answerable to the call of duty at the time he was injured. In view of the foregoing authorities, therefore, the court is persuaded that libelant is entitled to maintenance and cure. It is therefore by the court

Ordered that there be entered herein, upon findings of fact and conclusions of law, a decree in favor of libelant and against respondent for maintenance and cure in the sum of $544 and that libelant recover his costs.

In the United States Court of Appeals,
Ninth Circuit—December 8, 1954

No. 13743

Matson Navigation Company,
a corporation,
Appellant,

vs.

Henry C. Lawler,
Appellee.

OPINION

PER CURIAM.

This is an appeal from a decree awarding maintenance to a seaman on account of injury accidentally suffered while on shore leave under circumstances indicating no willful misbehavior on the injured man's part. The seaman was under articles at the time and was answerable generally to the call of duty. The injury occurred in his and the ship's home port, and for that reason the shipowner contends that the decree was erroneous.

The current trend of authority is to the contrary, as the district judge adequately pointed out in his opinion, 108 F. Supp. 946. Since we are in agreement with the trend, no good purpose would be served by adding our comments to the wealth of learning on the subject.

Affirmed.

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MATSON NAVIGATION COMPANY,
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Petitioner,

vs.

HENRY C. LAWLER,
Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

BRIEF FOR RESPONDENT IN OPPOSITION AND ANSWER TO AMICUS CURIAE BRIEF ON BEHALF OF PACIFIC AMERICAN STEAMSHIP ASSOCIATION.

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MATSON NAVIGATION COMPANY,
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HENRY C. LAWLER,
Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

BRIEF FOR RESPONDENT IN OPPOSITION.

OPINIONS BELOW.

The opinion of the Court of Appeals (R. 52) is reported in 217 Fed. 2d 645. The opinion of the District Court (R. 11) is reported in 108 Fed. Supp. 946.

Both opinions are printed in an appendix to the petition for writ of certiorari herein.

JURISDICTION.

The judgment was made and entered December 8, 1954. The jurisdiction of this Court is invoked under 28 USC §1254(1).

QUESTION PRESENTED.

Is a seaman entitled to maintenance when injured while under ship's articles on authorized shore leave in the port where he maintains his legal residence?

STATEMENT OF THE CASE.

Respondent adopts petitioner's "Statement of the Case" except as to the last sentence thereof reading as follows: "The ship could not have called him for duty before 9:30 a.m. the next day because he could not have been found." This statement is not correct. Respondent was under ship's articles at the time he was hurt. (R. 15.) He was subject to the call of the ship under the terms of such articles, and he could have been recalled to the ship at any time had an emergency arisen requiring his presence aboard the ship. There is nothing in the record to support the statement that respondent could not have been located prior to the time he was due to return to the ship at 9:30 a.m. on May 12, 1952.

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The following additional facts should be noted. At the time of Lawler's accident the SS LURLINE was and is engaged in a continuous run between the coast of California, Honolulu, and return. One voyage starts at San Francisco and terminates at Wilmington, California, by way of Honolulu. The next voyage commences at Wilmington and ends at San Francisco, by way of Honolulu. Stops are made at each of the three ports just long enough to disembark passengers and take on supplies and new passengers for the next leg of the voyage. It is a continuous operation. (R. 43.) Under such a schedule, it is the practice and to the company's advantage (it saves considerable time in port), for the crew to sign articles for the next voyage while the ship is at sea and just about to complete the current voyage. (R. 34.) The commencement time of the new articles is the same as the termination time of the old. There is no gap in between. (R. 46.)

PETITIONER'S CONTENTION.

Petitioner must and does concede that if Lawler's accident had occurred under the same circumstances but in a port other than the port of his legal residence, there would be no question as to his right to maintenance. (*Aguilar v. Standard Oil Co.,* 318 U.S. 724; *Warren v. United States,* 340 U.S. 543; *Farrell v. United States,* 336 U.S. 511.) Petitioner contends, however, that in this case the seaman is not entitled to maintenance because he was hurt in the port where

he maintains his legal residence. Neither existing case law nor logic supports petitioner's contention in this regard.

ARGUMENT.

For many centuries admiralty law has recognized the right of a seaman to maintenance and cure if he falls sick or sustains injury in the service of a vessel, and without wilful misconduct on his part. The ancient remedy anticipated by at least a thousand years our modern workmen's compensation laws which apply to shoreside workers but not to seamen. Seamen must look to maintenance as their sole means of support in case of illness or injury, except where the illness or injury may be caused by negligence or unseaworthiness of the vessel, in which case they may claim damages from the owner. It is well settled that the right to maintenance is not restricted to those injuries or illnesses caused by the employment. (*Calmar SS Corp. v. Taylor,* 303 U.S. 525.) The right to maintenance has been extended to injuries sustained ashore while the seaman is on authorized shore leave. (*Aquilar v. Standard Oil Co.,* supra; *Warren v. U. S.,* supra; *Farrell v. U. S.,* supra.)

Petitioner concedes all this, but contends that the "shore leave" cases should be restricted to injuries sustained in ports other than the port of the seaman's residence. There is no logical reason for such a distinction and the cases do not support the position taken by petitioner. It was expressly rejected many

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years ago by Justice Story in *Reed v. Canfield,* Fed. Cas. No. 11641. Discussing the seaman's right to maintenance in that case, Justice Story had this to say:

> "And I am wholly unable to perceive any principle, upon which a distinction can be maintained between a service in a foreign and a home port.
>
> It has been suggested, that a seaman at home cannot be entitled to any claim against the owners of the ship for injuries received on the ship's service, any more than a mechanic or manufacturer at home for like injuries in the service of his employer. If the maritime law were the same in all respects with the common law, and if the rights and duties of seamen were measured in the same manner, as those of mechanics and manufacturers at home, doubtless the cases would furnish a strong analogy. But the truth is, that the maritime law furnishes entirely different doctrines upon this, as well as many other subjects, from the common law. Seamen are in some sort coadventurers upon the voyage; and lose their wages upon casualties, which do not affect artisans at home. They share the fate of the ship in cases of shipwreck and capture. They are liable to different rules of discipline and sufferings from landsmen. The policy of the maritime law, for great, and wise, and benevolent purposes, has built up peculiar rights, privileges, duties and liabilities in the sea service, which do not belong to home pursuits." (1948 A.M.C. 764.)

While the seaman involved in the *Reed* case was directly engaged in performing services for his em-

ployer at the time he was hurt, Justice Story did not place any particular emphasis on this fact in laying down the general principles set forth above.

Smith v. United States (C.C.A. 3), 167 Fed. 2d 550, involved a seaman who was injured in his home port while on authorized shore leave and not performing any service for the ship. In that case the seaman had signed articles on February 16, 1944, for service aboard the SS ROBERT JORDAN in his home port. On February 19, 1944, the seaman went ashore, went to his home and then went to a friend's house where he spent the night. On the following morning as he was leaving his friend's home he fell on some uneven ground in the driveway and injured his ankle. At page 762 the Court stated as follows:

> "*Argument is made that relief should be denied because libellant was not actually on a foreign voyage but in the home port of the vessel, was not engaged in the ship's business, and, although on shore leave, was not within the immediate vicinity of the ship at the time of his injury. None of these matters, in our opinion, is ground for denying relief.* (Emphasis added.)
>
> "The liability of the ship for maintenance, cure and wages of sick or disabled seamen is well established in the admiralty law. It is based upon entirely different doctrines from those relating to the liability of the master at common law or the employee under workmen's compensation statutes. Its basis was carefully explained more than a century ago by Mr. Justice Story in *Harden v. Gordon,* Fed. Cas. No. 6,047, and *Reed v. Canfield,* Fed. Cas. No. 11,641. Some of the

lower federal courts imported into the application of the admiralty doctrine principles borrowed from common law or workmen's compensation cases, but the Supreme Court repudiated these holdings in the recent case of *Aguilar v. Standard Oil Co.,* 318 U.S. 724, 733, 1943 A.M.C. 451, which reaffirmed the ancient doctrine of the admiralty law and held that the liability for maintenance and cure on account of sickness or injury in the service of the vessel, and not due to misconduct, extended to injuries received by the seamen while on shore leave."

* * * * * * *

In *Hunt v. Trawler Brighton, Inc.* (D.C. Mass.) 1952 A.M.C. 335, a seaman had returned to his home port from a fishing trip on the TRAWLER BRIGHTON. The evidence showed that it was customary for fishing vessels such as the BRIGHTON to lay over in the home port for a period of forty-eight hours before again putting out to sea. During this forty-eight hour period the seaman went ashore, first paying a visit to his aunt, and then in the late afternoon going to his own room. While leaving his home, intending to go to a restaurant for a meal, the seaman fell and broke his leg.

The Court held that at the time of his injury the seaman was a member of the crew of the BRIGHTON, even though at the time of injury he was on shore leave in his home port engaged in his own pursuits. The Court had this to say at page 337:

"Respondent argues that libellant, while he was on shore leave in his home port, going about his

> own affairs and not actively engaged in any activity connected with his ship, cannot be considered as having been in the service of the ship. This contention must be rejected. The right to maintenance and cure is not determined by what the seaman is doing when he receives his injury. It is only required that he be in the service of the ship in the sense of being generally answerable to the call of duty. * * * A seaman on shore leave is still in the service of his ship. *Aguilar v. Standard Oil Co.,* 318 U.S. 724, 733, 1943 A.M.C. 451. It is true that the *Aguilar case* was confined to its own facts and left open the question of whether all activities on shore leave were included, but this question appears to have been settled in *Warren v. United States,* 340 U.S. 523, 1951 A.M.C. 416, where maintenance was allowed to a seaman injured at a dance hall where he had gone purely for his personal diversion. This right of the seaman is not limited, as respondent argues, to the case of injuries which occur while on shore leave in foreign ports, but extends also to the case where the injury is received in the seaman's home port. *Smith v. United States,* 1948 A.M.C. 761, 167 F. (2d) 550; *Reed v. Canfield* (supra)."

These decisions, are entirely logical and consistent with the historical concept of maintenance.

Petitioner argues that home port injuries sustained by seamen should only be compensable if the injuries are sustained while the seaman is directly engaged in performing services aboard the ship or for the ship, as in the *Reed* case. Petitioner overlooks the fact that

under the rule laid down by this Court in *Aguilar* and *Warren,* supra, a seaman is considered to be "in the service of the ship" even while on shore leave and engaged in purely personal pursuits. Although these cases involved injuries sustained while seamen were ashore in foreign ports, the rationale of the decisions would also grant a recovery where the accident occurs in the seaman's home port, provided, as in the case at bar, the seaman is injured while on authorized shore leave *and while under articles.*

The facts of the case at bar readily illustrate how illogical it would be to deny a recovery here because of the fortuitous circumstance that the injuries were sustained by respondent while ashore in the port of his legal residence. He left the SS LURLINE at San Francisco, California, for authorized shore leave of 24 hours' duration. He was under articles and, in case of an emergency and if he could be located, could have been recalled to the ship prior to the termination of his shore leave. His legal status while ashore at San Francisco was no different than his status while ashore at Los Angeles or Honolulu. His purpose in going ashore was the same in all of these ports, namely, to secure a 24 hour respite and a change from his confinement and labors aboard the ship. It was to the Company's benefit to place respondent and the other crew members under articles for the succeeding voyage prior to the arrival of the vessel at San Francisco. It was also to the Company's benefit for Lawler to obtain rest and recreation ashore in San Francisco prior to the commencement of a new voyage.

> "* * * Men cannot live for long cooped up aboard ship without substantial impairment of their efficiency, if not also serious danger to discipline. Relaxation beyond the confines of the ship is necessary if the work is to go on, more so that it may move smoothly. No master would take a crew to sea if he could not grant shore leave, and no crew would be taken if it could never obtain it. Even more for the seaman than for the landsman, therefore 'the superfluous is the necessary * * * to make life livable' and to get work done. In short, shore leave is an elemental necessity in the sailing of ships, a part of the business as old as the art, not merely a personal diversion."
>
> *Aguilar v. Standard Oil Co.* (supra, p. 734).

Why, then, should the company be permitted to avoid the payment of maintenance in this case?

Petitioner argues that not only must the seaman be injured while "in the service of the ship" but also while "subject to the call of duty," citing the *Farrell* case, supra. But the very point of the *Farrell*, *Aguilar* and *Warren* cases is that seamen while under articles and on authorized shore leave *are* subject to the call of duty, even though their superior officers may have difficulty in locating them for return to the ship prior to the termination of the authorized shore leave. Petitioner contends that the respondent was not subject to the call of duty because he probably could not have been located prior to the time he was required to report back to the ship. But this is true of all cases of shore leave. Seamen on authorized

shore leave are merely bound to return to the ship by a certain time. Where they go, or what they do during their shore leave, is not ordinarily determined or delineated by their superior officers, and in the ordinary situation the seamen ashore do not and are not obliged to keep the ship advised of their whereabouts.

What petitioner is really contending in this case is that *Aguilar, Warren* and the other modern cases have gone too far in the protection of seamen, and that we should turn back the clock and eliminate a good measure of such protection. Implicit in petitioner's argument is the wishful hope that this Court, by a reversal in this case, will instigate a trend back to the "good old days" when seamen were more at the mercy of shipowners and ships' officers.

RESPONDENT'S ANSWER TO AMICUS CURIAE BRIEF OF PACIFIC AMERICAN STEAMSHIP ASSOCIATION.

The *amicus curiae* brief of Pacific American Steamship Association is a curious one. The only case cited is *The Osceola* (1903), 189 U.S. 158, a landmark decision with which none of the parties can have any disagreement. Pacific American Steamship Association's entire position, and the only argument advanced in its brief in support of the granting of certiorari in this case, is that because American seamen have finally been able to throw off the semi-serfdom that was their lot a century or so ago, and have achieved fairly decent wages and working conditions, that their historic right to maintenance should be chipped away at, if not eliminated entirely.

Pacific American Steamship Association (hereinafter referred to as PASA) supports its argument in this respect with a number of misleading statistics and statements, all of which are entirely outside the record in this case.

For example, PASA states in its brief (p. 3) that the average monthly wage for West Coast seamen is now $553.13. PASA fails to point out that the base pay of the seaman here involved, at the time of his injury, was only $226.46 per month. (R. 8.) PASA compares the average monthly wages of seamen with the wages of workers ashore. But this is obviously not a fair comparison. The shoreside worker is free to spend at least one-half of his time at home

with his family, or in recreational and other pursuits of his own. On the other hand, a seaman has no time with his family, and his so-called "free time" is limited to the narrow confines of a ship at sea, except for occasional opportunities to go ashore for a few hours. Furthermore, if PASA had presented to this Court the average *yearly* earnings of West Coast seamen, we are quite sure that such *annual earnings* would be little if any higher than the annual earnings of shoreside workers, because of the intermittent nature of employment at sea, due to lack of jobs, ship layups for repairs, and the like.

In listing the benefits available to injured seamen, PASA also neglects to point out that the greatest single benefit available to shoreside workers, i.e. workmen's compensation, is not available to seamen.

As an extreme example, take the case of a seaman who loses his leg in an accident aboard ship, the accident not being caused by negligence or the unseaworthiness of the vessel. The injured seaman spends many months in a marine hospital, during which time he is entitled to no maintenance whatsoever. He is finally discharged from the marine hospital with an artificial leg and has reached the point where everything that can be done for him by way of medical treatment has been done. Under the law of maintenance this seaman will not be entitled to any maintenance whatsoever, for the reason that he has reached his maximum recovery and there is nothing further that medical treatment can do for him. (*Far-*

rell v. U. S., 336 U.S. 511.) A worker receiving the same injury ashore would be entitled to receive temporary compensation payments from the day he was injured until he had achieved maximum recovery and would then receive a substantial permanent disability award, the amount of such award depending upon the law of the state in which the particular injury occurs. Such benefits are not available to seamen.

Only where the injuries sustained by a seaman can be attributed to negligence or unseaworthiness does the seaman have an advantage over shoreside workers. In the great majority of cases, an injured seaman is at a distinct disadvantage.

CONCLUSION.

In the case at bar, the seaman was injured while on authorized shore leave and while under articles of employment with Matson Navigation Company. While he was not obligated to return to the ship until the following morning, Lawler, under his articles of employment, was subject to earlier recall to the ship if need arose and he could be located. While it is true that San Francisco happened to be the place of Lawler's legal residence, this fortuitous circumstance cannot alter the fact that at the time he sustained his injuries Lawler was in the service of and subject to the call of his ship under the doctrine of the *Aguilar, Warren* and *Farrell* cases (supra).

It is respectfully submitted that the Petition of Matson Navigation Company for a Writ of Certiorari herein should be denied.

Dated, San Francisco, California,
April 4, 1955.

Respectfully submitted,
RICHARD GLADSTEIN,
Counsel for Respondent.

GLADSTEIN, ANDERSEN, LEONARD & SIBBETT,
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HAROLD B. WILLEY,

In the Supreme Court of the United States

OCTOBER TERM, 1954

No. 639

MATSON NAVIGATION COMPANY, a corporation,
Petitioner,

vs.

HENRY C. LAWLER,
Respondent.

Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

Amicus Curiae Brief on Behalf of Pacific American Steamship Association

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STATEMENT OF INTEREST AND SCOPE OF BRIEF

This brief as amicus curiae is filed on behalf of Pacific American Steamship Association, Inc., a non-profit California corporation. The members of the Association are twelve West Coast steamship companies comprising about 90% of the dry cargo and passenger vessel operators on the Pacific Coast. They operate a total gross tonnage of over one million tons and represent about 20% of the privately owned American-flag merchant marine now active in foreign and domestic trades on a national basis.

The instant case would require wages, maintenance, and cure to be paid where the injury occurs while the seaman is

off-work, off-ship at his home port. Any extension, as this is, of the scope of the obligation to pay maintenance, wages and cure is of compelling interest to the steamship industry and therefore, perforce, to the American public as consumers and vendors of ocean carried goods and as supporters through taxation of the subsidies paid to various members of the steamship industry pursuant to the Merchant Marine Act of 1936.

The present cost of maintenance is not inconsiderable. Maintenance payments by all members of Pacific American Steamship Association employing a monthly average of eight thousand seamen range from 1.1 million to 1.4 million dollars in a representative year. For American-flag owners as a whole, the cost of maintenance is in the neighborhood of six million dollars annually.

The instant case presents a vital question of maritime law and policy in that the scope of this traditional benefit, peculiar to the seaman, is by the decision of the court below, extended to a landsman's risk which has no relation to the seamen's calling and yet would provide benefits not enjoyed by shoreside workers and which are an unnecessary addition to already existing and adequate protections. This brief will seek to show the lack of both the social need and the logical compulsion for any such extension.

The doctrine of wages, maintenance and cure had its historical genesis at a time when conditions of seaman employment were far different than they are today. It was conceived out of the necessity of providing protection for a class of workmen peculiarly in need thereof. Any extension of its scope should be weighed and determined in the light of the same considerations.

The following brief outline of the economic benefits presently enjoyed by seamen will furnish such a perspective:

PRESENT ECONOMIC STATUS OF AMERICAN SEAMEN

1. Wages

Since 1939 the average American seaman's monthly earnings have increased on the West Coast from $82[1] to $553.13.[2] In percentages his gain is almost 700% over prewar earnings. A considerable portion of this advance has occurred in the post-war years. This most recent period has seen the seaman outstrip even the highly skilled worker in the auto and steel industry. A recent study[3] reports:

> "* * * For example, while seamen's earnings were slightly below those of steel and automobile workers in 1945, by the Fall of 1952 they were 19 per cent higher than earnings in the steel industry and 21 per cent higher than earnings in automobile manufacturing."

It must be remembered that these figures do not reflect the very substantial value of board and room received as an incident of employment. The current West Coast Collective Bargaining Agreements provide that from $8 to $10 per day must be paid to the seaman when board and lodging are not provided.

2. Disability Benefits

In addition to his right to sue the employer (1) for negligence[4] and (2) for absolute liability resulting from unsea-

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1. *Industrial Relations in the Ocean Shipping Industry*, Report of Industrial Relations Counselors, Inc. to Maritime Industry Survey Committee (1953). For purposes of wage studies the Able Seaman is customarily considered the "average" seaman.

2. *Seamans Earnings*—Research Report issued July 16, 1954, by Pacific Maritime Association.

3. *Industrial Relations in the Ocean Shipping Industry*, p. 64. (See footnote 1, *supra*)

4. 46 U.S.C. Sec. 688.

worthiness,[5] the seaman enjoys benefits analogous, but far superior, to the shoreside workmen's compensation remedy.

To enumerate these latter benefits:

A. Where the seaman is injured or suffers illness while in the service of his ship, he is entitled to:

(1) Free hospitalization and out-patient medical care including drugs, dental care, X-rays, laboratory tests, etc. (42 U.S.C. sec. 249);

(2) Maintenance payments of $8 per day from his employer while in a non-hospitalized status until cured or until pronounced permanently incurable. There is no time limit;

(3) If the disabled seaman is on articles he is entitled to payment of basic wages to the end of the voyage. By example, a broken leg ashore in San Francisco at the start of a fifty-day trans-Pacific voyage would guarantee the able seaman over $500 in unearned wages;

(4) A guaranteed payment from the Employer-Employee Welfare Fund of $45 per week for the first twenty-six weeks of disability, plus $10 per day for the first twelve days of hospitalization; (These figures apply to West Coast seamen. Welfare Plans with similar benefits cover East Coast and Gulf seamen.)

(5) If disability occurs as a result of collision, stranding, fire or sinking of the vessel, the seaman is entitled to disability compensation at the rate of $100 per month while hospitalized and $150 per month while convalescing, up to a maximum of $5,000. (This by provision of collective bargaining agreements extending the coverage of the Second Seaman's War Risk insurance to marine perils.)

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5. *THE OSCEOLA*, 189 U.S. 158 (1903).

B. Where the seaman is injured but *not* in the service of his ship he is still entitled to:

(1) The free medical care benefits outlined under (1) above if his injury or illness occurs within 90 days of his last sea service amounting to 60 days or more. (Lack of opportunity to ship operates to extend the 90 day period. 42 C.F.R. sec. 32.14-17.)

(2) The $45 weekly disability payment and $10 daily hospital benefit provided by the Welfare Plan (in the case of West Coast seamen).

These off-work benefits are superior to the coverage provided by the majority of shoreside collective bargaining contracts. For the vast majority of Americans free medical care and disability compensation for off-work injury and illness simply does not exist. An exception is the State of California where a limited form of state disability insurance provides employee-financed benefits up to $35 per week and hospitalization of $8 per day for 12 days but *not* free medical care.

In this setting the paramount question is whether the doctrine of wages, maintenance and cure should now be *extended* to permit the seaman injured while off-work at his home port to receive maintenance payable for an unlimited period at the rate of $8 per day and unearned wages to the end of the voyage *in addition* to the already very favorable Welfare and free medical care benefits available to him for off-work injuries and illnesses.

As a practical illustration, if seaman A and janitor Z are both so unfortunate as to fall down the stairs in their homes on a given evening and suffer a broken leg, both will be in need of adequate medical care and some compensation for the loss of earnings during their periods of disability. Independently of the decision below, seaman A will receive free

medical care and hospitalization, plus $45 per week for 26 weeks as welfare payments. By the decision below he will receive, in addition, $56 per week, maintenance, and if the injury occurs at the beginning of the voyage, he would also receive his basic wages for the duration of the voyage, an amount probably in excess of $500.

By contrast, janitor Z would receive nothing beyond what he might be able to provide from private insurance.

As will be seen, the seaman's economic position is favorable when contrasted with the organized shoreside worker and overwhelmingly favorable if contrasted with the unorganized worker. It is respectfully submitted that before further advances are granted to the seaman purely by reason of his status as a seaman and by extension of a doctrine which had as its historical basis considerations of need, a careful re-analysis should be made to decide whether the extension is either logically, economically, or otherwise, justified in the light of the present status of seamen.

CONCLUSION

We respectfully submit that the petition should be granted and the judgment reversed.

Dated: San Francisco, California, March 4, 1955.

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Of Counsel

CERTIFICATE OF COUNSEL

I, John Hays, counsel for Pacific American Steamship Association, Amicus Curiae, and a member of the bar of the Supreme Court of the United States, hereby certify that on the 4th day of March, 1955, I served copies of the foregoing brief on counsel for all parties of record by mailing copies to their offices in duly addressed envelopes.

JOHN HAYS

for Amicus Curiae
Attorney

CERTIORARI DENIED